

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK ET AL,
Plaintiffs,
v.
UNITED STATES DEPARTMENT OF HOMELAND
SECURITY ET AL,
Defendants.

**CIVIL ACTION NO.
19 Civ. 07777 (GBD)
(OTW)**

MAKE THE ROAD NEW YORK ET AL,
Plaintiffs,
v.
TRACY RENAUD ET AL,
Defendants.

**CIVIL ACTION NO.
19 Civ. 07993 (GBD)
(OTW)**

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL

WHEREAS, Plaintiffs Make the Road New York, African Services Committee, Asian American Federation, Catholic Charities Community Services, and Catholic Legal Immigration Network, Inc. (“Organizational Plaintiffs”) and the State of New York, the City of New York, the State of Connecticut, and the State of Vermont (“Government Plaintiffs,” and, together with Organizational Plaintiffs, “Plaintiffs”) filed above-captioned lawsuits to challenge and enjoin implementation and enforcement of a regulation (the “Prior Rule”) issued in 2019 that purported

to interpret and apply Section 212(a)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4) (the “Public Charge Statute”), *see Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019), and moved to preliminarily enjoin Defendants from implementing and enforcing the Prior Rule;

WHEREAS, this Court granted Plaintiffs’ motion, held that Plaintiffs were likely to be able to establish that the Prior Rule was contrary to law and was arbitrary and capricious, and entered a preliminary injunction enjoining Defendants from implementing or enforcing the Prior Rule, *Make the Rd. N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *N.Y v. U.S. Dep’t of Homeland Sec.*, 408 F. Supp. 3d 334 (S.D.N.Y. 2019);

WHEREAS, the Court of Appeals for the Second Circuit substantially affirmed this Court’s preliminary injunction order while narrowing its scope to the States in this Circuit, *N.Y. v. United States Dep’t of Homeland Sec.*, 969 F.3d 42 (2d Cir. 2020);

WHEREAS, the Supreme Court granted Defendants’ petition for a writ of certiorari, *Dep’t of Homeland Sec. v. N.Y.*, 141 S. Ct. 1370 (2021), and subsequently dismissed the petition pursuant to the Rules of the Supreme Court of the United States 46.1, *Dep’t of Homeland Sec. v. N.Y.*, No. 20-449 (Mar. 9, 2021);

WHEREAS, four other federal district courts agreed with Plaintiffs that the Prior Rule was contrary to law and granted preliminary injunctions prohibiting Defendants from implementing or enforcing the Prior Rule, *Casa De Maryland, Inc. v. Trump*, 414 F. Supp. 3d 760 (D. Md. 2019), *rev’d and remanded*, 971 F.3d 220 (4th Cir. 2020), *reh’g en banc granted*, *Casa De Maryland, Inc. v. Trump*, 981 F.3d 311 (4th Cir. 2020); *Cook Cnty., Illinois v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019), *aff’d on other grounds sub nom. Cook Cnty., Illinois v. Wolf*, 962 F.3d 208 (7th Cir. 2020), *City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 408 F. Supp.

3d 1057 (N.D. Cal. 2019), *aff'd sub nom. City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742 (9th Cir. 2020); *Washington v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 1191 (E.D. Wash. 2019), *aff'd in part, vacated in part sub nom. City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 981 F.3d 742 (9th Cir. 2020);

WHEREAS, the U.S. Courts of Appeals for the Seventh and Ninth Circuits held that the plaintiffs in those actions were likely to be able to establish that the Prior Rule was contrary to law and affirmed preliminary injunctions enjoining Defendants from implementing or enforcing the Prior Rule, *Cook Cnty., Illinois v. Wolf*, 962 F.3d 208 (7th Cir. 2020); *City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742, 763 (9th Cir. 2020);

WHEREAS, the U.S. District Court for the Northern District of Illinois subsequently entered a judgment vacating the Prior Rule pursuant to Federal Rule of Civil Procedure 54(b) on the merits. *Cook Cnty., Illinois v. Wolf*, 498 F. Supp. 3d 999 (N.D. Ill. 2020). The defendants in that action appealed the judgment and subsequently voluntarily dismissed it before the U.S. Court of the Seventh Circuit, causing the district court's judgment to go into effect. *Cook Cnty., Illinois v. Wolf*, 2021 WL 1608766 (7th Cir. Mar. 9, 2021). The Supreme Court thereafter denied an application filed by certain States to intervene and to stay the district court's judgment. *Texas, et al., v. Cook Cnty., Illinois, et al.*, No. 20A150 (Apr. 26, 2021). The district court's judgment has become final and the time to appeal this judgment has expired;

WHEREAS, the Department of Homeland Security ("DHS") has acknowledged that the Prior Rule was fully, finally, and permanently vacated and has removed the Prior Rule from the Code of Federal Regulations, Inadmissibility on Public Charge Grounds; Implementation of Vacatur, 86 Fed. Reg. 14,221 (Mar. 15, 2021); *see also* Department of Homeland Security, 2019 *Public Charge Rule Vacated and Removed; DHS Withdraws Proposed Rule Regarding the*

Affidavit of Support (Mar. 11, 2021), <https://www.dhs.gov/news/2021/03/11/2019-public-charge-rule-vacated-and-removed-dhs-withdraws-proposed-rule-regarding>;

WHEREAS, attempts by certain States to intervene in litigation challenging the Prior Rule have been unsuccessful, *Cook Cnty., Illinois v. Mayorkas*, 340 F.R.D. 35 (N.D. Ill. 2021), *aff'd sub nom. Cook Cnty., Illinois v. Texas*, 37 F.4th 1335 (7th Cir. 2022), *cert. denied sub nom. Texas v. Cook Cnty.*, 143 S. Ct. 565 (2023); *Arizona v. City & Cnty. of San Francisco, California*, 142 S. Ct. 1926 (2022);

WHEREAS, DHS subsequently issued a new regulation (the “Current Rule”) that interprets and applies the Public Charge Statute, and the Current Rule became effective on December 23, 2022, and is currently in effect, Public Charge Ground of Inadmissibility, 87 Fed. Reg. 55,472 (Sept. 9, 2022); and

WHEREAS, Defendants have stated to this Court that in light of the foregoing this case and others challenging the vacated Prior Rule should be dismissed as moot, *State of N.Y. et al. v. U.S. Department of Homeland Security, et al.*, No. 19-cv-7777, ECF No. 324 (stating that “Defendants believe that these cases, and others challenging the vacated 2019 rule, should promptly be dismissed as moot”); *Make the Road N.Y. et al. v. Tracy Renaud, et al.*, No. 19-cv-7993, ECF No. 341 (same);

NOW, THEREFORE, Plaintiffs hereby voluntarily dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

Dated: New York, New York
March 3, 2023

Respectfully submitted,

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